

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:05cr390

UNITED STATES OF AMERICA

vs.

MONTAVIS ANTWANN McSWAIN (8)

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ORDER

**THIS MATTER** is before the Court upon motion of the defendant pro se for a reduction of sentence based on the retroactive amendments to the United States Sentencing Guidelines relating to crack cocaine. (Doc. No. 358).

Prior to the imposition of the sentence, the government withdrew all but one of the defendant's prior convictions from the 21 U.S.C. § 851 Information. (Doc. No. 299: Notice). The defendant was then sentenced to 120 months' imprisonment pursuant to the mandatory minimum sentence prescribed in 21 U.S.C. § 841(b)(1)(B), based on his plea to possession with intent to distribute 5 grams or more of a mixture and substance containing cocaine base. (Doc. No. 56: Superseding Indictment; Doc. No. 323: Judgment; Doc. No. 333: Tr. at 13, 25). Accordingly, the change in the guidelines does not affect the defendant's sentence. Neal v. United States, 516 U.S. 284, 296 (1996) (retroactive amendment to guidelines does not alter statutory mandatory minimum).

**IT IS, THEREFORE, ORDERED** that the defendant's motion is **DENIED**.

The Clerk is directed to certify copies of this order to the defendant, the Community Defender, the United States Attorney, the United States Marshals Service, and the United States Probation Office.

Signed: November 18, 2008

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.  
Chief United States District Judge

